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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1651

SEATRAN SHIPBUILDING CORPORATION

and

POLK TANKER CORPORATION,

Petitioners,

v.

SHELL OIL COMPANY, *et al.*,

Respondents.

**BRIEF OF THE SOHIO NATURAL RESOURCES COMPANY,
AMICUS CURIAE, IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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RESOURCES COMPANY*

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Sohio Natural Resources Company ("SOHIO") submits this brief *amicus curiae* in support of the petitioners' request that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the District of Columbia Circuit in this case. [All parties to this action have given their written consent to the filing of this brief pursuant to Rule 42(2) of the Rules of this Court. Copies of the letters of consent have been filed with the Clerk.]

INTEREST OF AMICUS CURIAE

SOHIO is a major consumer of tanker services in the domestic Alaskan oil trades and the current time-charterer through September 1980 of the T. T. STUYVESANT, the 225,000 deadweight ton oil tanker upon which this case centers. SOHIO's commercial interests could be impaired should this Court fail to review the decision and judgment of the Court of Appeals.

REASONS FOR GRANTING THE WRIT

The petitioners have requested this Court to review the decision below concerning the authority of the Secretary of Commerce under the Merchant Marine Act, 1936, as amended, 46 U.S.C. § 1101 *et seq.* ("the Act") to remove permanently domestic trade restrictions on vessels built with a construction differential subsidy ("CDS") in return for full CDS repayment. This issue is one of importance to the entire maritime industry for reasons adequately explained by the petitioners. The issue additionally has special significance for SOHIO as the current time-charterer of the STUYVESANT and a major consumer of tanker services in the domestic Alaskan oil trade.

The STUYVESANT is presently transporting oil for SOHIO from Valdez, Alaska, to Panama for transshipment to refineries in Gulf and Eastern United States under a three-year charter extending from September 1977 through September 1980. In the absence of review by this Court, the decision below will result in barring the STUYVESANT's continuous participation in the Alaskan oil trade and thus prohibit its completion of the remaining 17 months of its charter with SOHIO. Such a prohibition could interfere with the efficient and critical transportation of crude oil from Alaska to domestic refineries.

This result is ironic in light of the history behind and purposes served by the Secretary's action with respect to the STUYVESANT. SOHIO time-chartered the STUYVESANT in June of 1977 to effectuate its plans to transport North Slope crude oil from Alaska to other states and to assure the success of the Trans-Alaska Pipeline System ("TAPS"). (C.A. Joint App. at 271.) SOHIO's negotiations for charters during the spring and summer of 1977 had revealed (1) a shortage of readily available tonnage suitable for trade from Valdez, Alaska, to Panama transshipment facilities and (2) an unwillingness on the part of some to offer their available vessels at reasonable rates. (C.A. Joint App. at 266-274.) Thus the actions of the Secretary of Commerce that enabled the STUYVESANT to undertake the SOHIO charter responded directly to an extant need for additional tonnage in the domestic Alaskan oil trade and redressed a potentially unhealthy commercial situation in that trade.

The ironclad, mechanical rule adopted below impedes the Secretary's ability to respond to a vessel supply/demand imbalance of the variety that existed for SOHIO in the Alaskan trade in 1977. With the anticipated expansion of Alaskan North Slope crude oil production later this year, the number of vessels qualified and available to carry such oil will probably be inadequate to prevent a recurrence of the unfavorable commercial situation that existed in the summer of 1977. Under such circumstances, it is important that the Secretary of Commerce have the necessary administrative discretion to rectify any vessel supply/demand imbalance.

The decision of the Court of Appeals abrogates the broad purposes of the Merchant Marine Act, 1936, in favor of the interests of a select few. The result may under-

mine SOHIO's ability to transport Alaskan oil in an efficient manner and encourages its victimization as a consumer in any existing and future vessel supply/demand imbalance. The salient congressional purposes behind the Act, as discussed at some length in the Petition for a Writ of Certiorari in this case, are rendered more difficult to achieve by the decision below.

CONCLUSION

For all the above reasons, we support the petitioners' request that a writ of certiorari issue to review the opinion and judgment of the Court of Appeals in this case.

Respectfully submitted,

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